

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGES NOS. 13-90,
17-90 AND 18-90;

BROADWATER COUNTY DEPUTY
SHERIFFS AFFILIATED WITH
U.F.C.W. LOCAL NO. 1981,

Complainant,

vs.

BROADWATER COUNTY
COMMISSIONERS, BROADWATER
COUNTY SHERIFF, AND THE
BROADWATER PUBLIC SAFETY
COMMISSION

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND
RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

For purposes of adjudication, Unfair Labor Practice Charges
Nos. 13-90, 17-90 and 18-90 were consolidated.

A formal hearing was conducted in the above-entitled matters
on January 22, 1991, in the Broadwater County Courthouse, Townsend,
Montana before Stan Gerke, Hearing Examiner. This hearing was
conducted under authority of Section 39-31-406 MCA and in
accordance with the Montana Administrative Procedure Act, Title 2,
Chapter 4, MCA. The Complainant was represented by Timothy
McKittrick, Attorney at Law, Great Falls, Montana. Witnesses for
the Complainant included Marvin J. Alves, Secretary-Treasurer,
U.F.C.W. Local No. 1981; Steven Rushford, Deputy County Sheriff;
Dan Dillinger, Deputy County Sheriff; Eugene Determan,
Undersheriff; and, Richard Thompson, Sheriff. The Defendants were
represented by John T. Flynn, Broadwater County Attorney, Townsend,
Montana. Witnesses for the Defendants included Mary Alice Upton,
Mayor, City of Townsend; Robert L. Davis, Broadwater County
Commissioner; Walter Ray Goig, former Broadwater County
Commissioner; James B. Hohn, Broadwater County Commissioner; Steven

1 E. Doane, Broadwater County Commissioner, Elaine Gravely, Clerk and
2 Recorder, Broadwater County; and, Michael Evans, Council Member,
3 City of Townsend.

4 Subsequent to the hearing, the Parties submitted initial and
5 reply briefs in accordance with an established briefing schedule.

6 II. ISSUES

7 1. ULP No. 13-90 - Whether the Defendants violated Section
8 39-31-401(5) MCA. The unfair labor practice charge alleged the
9 Defendants unilaterally changed the terms and conditions of
10 employment on June 26, 1990, when health and welfare benefits were
11 reduced from \$318.00 to \$150.00 per month.

12 2. ULP No. 17-90 - Whether the Defendants violated Section
13 39-31-401(1) and (3) MCA. The unfair labor practice charge alleged
14 the Broadwater County Commissioners had threatened the Broadwater
15 County Sheriffs, their jobs and working conditions if they
16 continued to be represented by U.F.C.W. Local 1901.

17 3. ULP NO. 18-90 - Whether the Defendants violated Section
18 39-31-401(5) MCA. The unfair labor practice charge alleged that on
19 or about July 17, 1990 the County Commissioners refused and are
20 still refusing to negotiate in good faith with the union and the
21 Broadwater County Deputy Sheriffs committee.

22 III. MOTIONS

23 1. After submission of Complainant's case at time of
24 hearing, the Defendants moved to dismiss all complaints against
25 them for reason that no evidence of any unfair labor practice
26 action on the part of any of the parties was presented in
27 Complainant's case-in-chief. The Motion was taken under
28 advisement.

29 2. Subsequent to the hearing, the Complainant moved to amend
30 Unfair Labor Practice Charges Nos. 13-90, 17-90, and 18-90 to add
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1 as a party Defendant, the County of Broadwater. The Complainant
2 argued that County of Broadwater was represented at the hearing by
3 the County Attorney; County Commissioners, both current and former,
4 were present and testified at the hearing; and, the unfair labor
5 practice allegations center, in part, on the actions of the County
6 Commissioners in their elected capacity as representatives for the
7 County of Broadwater. The Motion was taken under advisement.

8 3. Subsequent to the hearing, the Complainant made Motion to
9 Amend Unfair Labor Practice Charges Nos. 13-90 and 10-90 to include
10 violations of Section 39-31-401(1) MCA. The Motion was taken under
11 advisement.

12 IV. FINDINGS OF FACT

13 1. On June 30, 1978, the City of Townsend, Broadwater
14 County, and the Broadwater County Sheriff entered into a Law
15 Enforcement Agreement. The stated purpose of the contract was to,
16 "...provide more flexible utilization of personnel, equipment and
17 facilities by the County and City, it is the desire of the parties
18 to have the County provide law enforcement for the City under a
19 City-County Department, for the consideration hereafter set forth
20 ...". Basically, the Law Enforcement Agreement was the vehicle by
21 which Broadwater County provided law enforcement to the City of
22 Townsend for a fee and created a Department of Public Safety
23 directed by the Broadwater County Sheriff. All law enforcement
24 officers would be subordinate to the Sheriff. The Law Enforcement
25 Agreement was to continue from year to year thereafter and could be
26 modified by the parties on or before June 30 of each year. The Law
27 Enforcement Agreement has been renewed each year up until this
28 present time. (Complainant Exhibit No. 2; Defendant's Exhibit No.
29 B).

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1 2. On May 2, 1989, the Local Government of Broadwater
2 County, State of Montana, the "Employer", and the employees of the
3 Broadwater County Sheriff's Department entered into an employment
4 agreement to be effective from July 1, 1989, to June 30, 1990.
5 Article 17 - Health Insurance, Section 1, provided that effective
6 January 1, 1989, "the Employer (Broadwater County) agreed to pay a
7 minimum amount of \$213.00 per month toward the total cost of the
8 premium for health insurance for the employee and his family."
9 (Complainant's Exhibit No. 3).

10 3. On May 31, 1990, the United Food and Commercial Workers
11 Local Union 1981 (the Complainant in this matter) was certified by
12 this Board as the exclusive collective bargaining agent for all
13 dispatchers, deputies, and undersheriffs employed by Broadwater
14 County.

15 4. By letter dated June 18, 1990, Marvin J. Alves,
16 Secretary-Treasurer, U.F.C.W. Local No. 1981, requested Bob Davis,
17 Chairman, Broadwater County Commissioners, to review dates to begin
18 negotiating a collective bargaining agreement. Mr. Alves, in
19 behalf of the Union, requested certain dates beginning with June
20 26, 1990.

21 5. On June 26, 1990, the Broadwater County Commissioners
22 issued a memo to all employees stating that the County would reduce
23 its contributions from \$213.00 to \$150.00 per month per employee
24 beginning in June, 1990. Mr. Steve Rushford, representing the
25 Union (Complainant) responded to the memo stating the Union opposed
26 the unilateral reduction in health insurance premium contributions
27 and such matter was an item for negotiations.

28 6. In response to the request to begin negotiations (see
29 Findings of Fact No. 4) the Defendants agreed to meet and negotiate
30 on July 3, 1990. At the start of the negotiating session, the
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1 Complainant presented the Defendant contract proposals consisting
2 of a fourteen page proposed collective bargaining agreement. After
3 approximately one hour of negotiations, the Defendants announced
4 their self-imposed time allotted for collective bargaining had
5 ended and the session was over.

6 7. Subsequent to the first negotiating session, the
7 Complainant requested future dates on which to negotiate. The
8 Complainant also requested that negotiating sessions be scheduled
9 for longer periods of time (more than just one hour) since Mr.
10 Alves traveled approximately 400 miles round-trip from Missoula to
11 attend these negotiating sessions. The Complainant further offered
12 to meet in split periods (morning and afternoon) and also on
13 weekends. The Defendants refused to meet except only on their own
14 scheduled Commissioners' meeting days and insisted such negotiating
15 sessions must be posted in the newspaper for three weeks prior to
16 any meetings. A second negotiating session was scheduled for July
17 17, 1990, with the one-hour time limit imposed over objections by
18 the Complainant.

19 8. On July 16, 1990, Sheriff Richard Thompson met with the
20 County Commissioners after being appointed as an agent to represent
21 the County for purposes of collective bargaining with the
22 Complainant. The County Commissioners also unilaterally cancelled
23 the negotiating session scheduled for the following day, July 17,
24 1990.

25 9. On July 17, 1990, Sheriff Thompson, acting as agent for
26 the Defendants, met with a group of deputy sheriffs, dispatchers
27 and undersheriff (members of the Complainant union). Sheriff
28 Thompson reported that it was the intent of the County
29 Commissioners to de-consolidate the City/County Law Enforcement
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1 Agreement and terminate the undersheriff, deputy sheriffs and
2 dispatchers if they continued to engage in union activities.

3 10. On August 8, 1990, Sheriff Thompson again met with a
4 group of deputy sheriffs, dispatchers and undersheriff and informed
5 them the County Commissioners had planned to de-consolidate the
6 City/County Law Enforcement Agreement and such de-consolidation was
7 to take place November 1, 1990. The Complainant filed a Motion for
8 a Temporary Restraining Order and a Complaint for an Injunction in
9 the First Judicial District Court of Lewis and Clark County on
10 August 22, 1990. District Court Judge Dorothy McCarty issued a
11 Temporary Restraining Order prohibiting the Defendants from
12 terminating, firing, laying off, or reducing the hours of the
13 deputy sheriffs, dispatchers, or undersheriff from de-consolidating
14 or threatening to de-consolidate the City/County Law Enforcement
15 Agreement.

16 11. On or about August 20, 1990, the Complainant, through Mr.
17 Alves, again requested the Defendants for dates to resume
18 negotiations. Such request was made to Mr. John T. Flynn, the
19 Broadwater County Attorney. Although Mr. Flynn did discuss
20 possible bargaining dates and informed Mr. Alves that Broadwater
21 County would be securing the services of a professional negotiator,
22 no negotiating sessions have been held to date of hearing.

23 V. DISCUSSION

24 The Montana Supreme Court has approved the practice of the
25 Board of Personnel Appeals in using federal court and National
26 labor Relations Board (NLRB) precedence as guidelines interpreting
27 the Montana Collective Bargaining for Public Employees Act as the
28 State Act is so similar to the Federal Labor Management Relations
29 Act, State ex rel Board of Personnel Appeals v. District Court, 183
30 Mont. 223 (1979), 598 P.2d 1117, 101 LORM 2297; Teamsters Local No.
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1 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272 (1981)
2 635 P.2d 1310, 110 LRRM 2012; City of Great Falls v Young (111),
3 686 P.2d 185 (1984) 199 LRRM 2682.

4 It is well settled that unilateral changes in mandatory
5 subjects of bargaining by an employer is an unfair labor practice
6 (violation of Section 8(a)(5) of the NLRA which is the Federal
7 counterpart of Section 39-11-401(5) MCA). See NLRB v. Katz, 196
8 U.S. 736, 50 LRRM 2177 (1962). In this instant matter, the
9 Complainant employees were receiving, pursuant to an employment
10 agreement, \$213.00 per month per employee contribution toward
11 health insurance. Less than one month after the U.F.C.W.
12 (Complainant Union) was certified as the exclusive bargaining
13 representative, the Defendant Broadwater County unilaterally
14 reduced the health insurance contribution from \$213.00 to \$150.00
15 per month. The facts are clear and undisputed; the Defendant
16 unilaterally altered the terms of an employment agreement even
17 after a request to bargain the subject was made. See also Auto
18 Fast Freight, Inc., 272 NLRB 561, 117 LRRM 1336 (1984) wherein the
19 NLRB held the employer in violation of 8(a)(5) for unilaterally
20 reducing the amounts into a health and welfare plan which it was
21 contractually obligated to contribute.

22 Section 39-11-305 MCA provides, "The public employer and the
23 exclusive representative, through appropriate officials or their
24 representatives, shall have the authority and the duty to bargain
25 collectively. This duty extends to the obligation to bargain
26 collectively in good faith ..." (Emphasis added). Defendant
27 Broadwater County limited bargaining sessions to one hour; would
28 schedule bargaining sessions only at their convenience on regular
29 scheduled Commissioners' meeting dates; would cancel scheduled
30 bargaining sessions unilaterally with little or no notice; and,
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1 would change bargaining representatives. It is an unfair labor
2 practice for an employer to limit bargaining sessions to
3 unreasonably short periods of time with considerable intervals
4 between sessions. Tennessee Chair Co. v. NLRB, 45 LRRM 1472 (1960).
5 Cancellations of bargaining sessions is considered dilatory or
6 evasive tactics and found to be an unfair labor practice. NLRB v.
7 M&M Bakeries, Inc., 45 LRRM 2085 (CA1 1959); NLRB v. Hibbard, 45
8 LRRM 2459 (CA7 1960). Defendant Broadwater County first negotiated
9 with the Complainant Union through the County Commissioners.
10 Sheriff Thompson was then appointed as the bargaining
11 representative. While District Court proceedings concerning the
12 temporary restraining order were underway, County Attorney Flynn
13 appeared to be the bargaining representative. The Complainant
14 Union was also falsely notified a professional negotiator would be
15 representing the County. Such tactics by an employer are
16 considered a violation. NLRB v. Fitzgerald Mills, 52 LRRM 2174
17 (CA2 1963), cert. denied 54 LRRM 2112 (U.S. S.Ct. 1963).

18 The record is clear that Sheriff Thompson informed a group of
19 deputy sheriffs, dispatchers and undersheriff (members of
20 Complainant Union) that Broadwater County would de-consolidate the
21 City/County Law Enforcement Agreement if the employees continued
22 their union activities. Such de-consolidation would result in the
23 lay-off or termination of most, if not all, the law enforcement
24 personnel. When Sheriff Thompson informed the employees of this
25 pending action, the Sheriff was acting in the appointed role as
26 bargaining representative for the Defendant Broadwater County.
27 Sheriff Thompson underwent extensive examination and other
28 witnesses, including County Commissioners, gave contradicting
29 testimony denying such threat was originated by the Defendant
30 Broadwater County or its commissioners. This Hearing Examiner
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1 placed much credence on the Sheriff's testimony. Regardless,
2 however, of wherever the threat of de-consolidation originated, an
3 appointed and duly authorized representative of the Defendant
4 Broadwater County did threaten employees with the loss of their
5 employment should they continue to engage in union activities.
6 This action is a clear violation of Sections 39-31-401(1) and (3)
7 MCA. NLRB v. Somerset Classics, Inc., 29 LRRM 2331 (CA2 1952);
8 NLRB v. W.T. Grant Co., 31 LRRM 2063 (CA9 1952); Falmouth Co. v.
9 NLRB, 37 LRRM 1057 (1955); Ahern Aircraft, Inc. v. NLRB, 112 LRRM
10 3298 (CA1 1983); Charge Card Assn. v. NLRB, 109 LRRM 2725 (CA6
11 1981).

12 At the time of hearing, the Defendant moved to dismiss all
13 complaints against them for reason that no evidence was presented
14 supporting any unfair labor practice. Defendant's Motion to
15 Dismiss is denied for reasons contained herein.

16 Subsequent to the hearing the Complainant made Motion to Amend
17 Unfair Labor Practice Charges Nos. 12-90 and 18-90 to include
18 violations of Section 39-31-401(1) MCA. Such Motion is denied
19 based upon ARM 24.26.205. Amending charges subsequent to a formal
20 hearing does not allow for due process in that opposing party does
21 not have adequate notice.

22 The Complainant also made Motion to Amend Unfair Labor
23 Practice Charges Nos. 13-90, 17-90 and 18-90 to include as a party
24 Defendant, the County of Broadwater. Controversy arose during the
25 investigation and pre-hearing procedures concerning the proper
26 named Defendant(s). It is clear that this Board has previously
27 identified the proper employer in its Letter of Certification
28 issued May 11, 1990 (Complainant's Exhibit No. 1). The Board
29 certified the United Food and Commercial Workers Local Union 1981
30 as the exclusive representative for collective bargaining purposes
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1 for all dispatchers, deputies, and undersheriffs employed by
2 Broadwater County excluding the sheriff and all others excluded by
3 the Montana Collective Bargaining for Public Employees Act, Section
4 39-31-101 et seq. MCA.

5 V. CONCLUSIONS OF LAW

6 1. The Board of Personnel Appeals has jurisdiction in these
7 matters pursuant to Section 39-31-405 et seq. MCA.

8 2. The proper Defendant(s) in these matters is Broadwater
9 County, Montana.

10 3. Defendant's Motion to Dismiss is denied.

11 4. Complainant's Motion to Amend Unfair Labor Practice
12 Charges Nos. 13-90 and 18-90 to include violations of Section 39-
13 31-401(1) MCA is denied.

14 5. Defendant violated Section 39-31-401(5) MCA by his action
15 of unilaterally altering the terms and conditions of employment
16 relating to health insurance contributions. (ULP NO. 13-90)

17 6. Defendant violated Sections 39-31-401(1) and (3) MCA by
18 its action of threatening employees with possible loss of
19 employment for engaging in union activities. (ULP No. 17-90)

20 7. Defendant violated Section 39-31-401(5) MCA by its
21 actions refusing to negotiate in good faith with the Complainant.

22 IV. RECOMMENDED ORDER

23 1. The Defendant shall reinstate health insurance
24 contributions to \$213.00 per month per employee and make whole each
25 and every employee who may have suffered any loss from date of
26 reductions of insurance benefits. The Defendant shall maintain the
27 contribution rate of \$213.00 per month per employee until such time
28 the rate may be changed through good faith bargaining with the
29 Complainant.
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1 2. The Defendant shall cease and desist from threatening any
2 employee with loss of employment and/or benefits for engaging in
3 union activities. The Defendant shall bargain in good faith with
4 the Complainant over any item concerning the possible de-
5 consolidation of the City/County Law Enforcement Agreement which
6 relates to a mandatory subject of bargaining.

7 3. The Defendant shall cease and desist from failing to
8 bargain in good faith with the Complainant consistent with findings
9 and discussions contained herein.

10 Entered and dated this 16th day of July, 1991.

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13 STAN GERKE
14 Hearing Examiner

15 SPECIAL NOTICE

16 In accordance with Board's Rule ARM 24.25.107(2), the above
17 RECOMMENDED ORDER shall become the FINAL ORDER of this board unless
18 written exceptions are filed within 20 days after service of these
19 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER upon
20 the Parties.

21 CERTIFICATE OF MAILING

22 The undersigned hereby certifies that true and correct copies
23 of the foregoing documents were, this day served upon the following
24 parties or such parties' attorneys of record by depositing the same
25 in the U.S. Mail, postage prepaid, and addressed as follows:

26 Timothy McKittrick
27 MCKITTRICK LAW OFFICES
28 P. O. Box 1184
29 Great Falls, MT 59401

30 John T. Flynn
31 Broadwater County Attorney
Box 96
Townsend, MT 59644

DATED this 16th day of July, 1991.

